APPENDIX "A"

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

ANNA MAE BRYANT, Administratrix of the Estate of JAMES MCKINLEY BRYANT, Deceased, et al,
Plaintiffs,
v.
INTERNATIONAL UNION, et al,
Defendants.
Civil Action No. 2394

DELLA SUE RICE, Administratrix of the Estate of WILL RICE, Deceased,
Plaintiff,
v.
INTERNATIONAL UNION, et al,
Defendants.
Civil Action No. 2395

OPINION, ORDER AND JUDGMENT

This matter comes before the Court on the motion of defendants, International Union, United Mine Workers of America, and District 23, United Mine Workers of America (hereinafter "Union"), and on the motion of defendant, Peabody Coal Company, Inc. (hereinafter "Peabody"), for summary judgment under the provisions of Rule 56 of the

Federal Rules of Civil Procedure. Having heard lengthy oral argument by counsel for all parties, as scheduled, on September 30, 1971, and having studied and considered the briefs submitted by counsel for all parties, the Court is of the opinion the motions of defendants should be sustained.

The pleadings, depositions, answers to interrogatories, and affidavits and other material filed in support of the motions for summary judgment show that, at all times material herein, Peabody owned and operated a coal mine in Muhlenberg County, Kentucky known as the River Queen Underground Mine No. 1. The plaintiffs' decedents were members of the Union and employees of Peabody at this mine. Both Peabody and the Union had for many years been parties to a collective bargaining agreement known as the National Bituminous Coal Wage Agreement of 1950, as amended, which covered the operations at River Queen Mine. An explosion occurred in the mine on August 7, 1968 which resulted in the deaths of the plaintiffs' decedents while they were at work in the mine. The plaintiffs have based their claims of liability against the defendants on an alleged breach by both Peabody and the Union of the safety provisions contained in the agreement.*

The labor contract contains a "Mine Safety Program" under which the Federal Mine Safety Code is adopted and incorporated by reference as a standard for the industry. Compliance with the terms of the Code is provided for through reports and recommendations of Federal coal mine inspectors and a Mine Safety Committee selected by the local union at each mine. The prime objective of the Mine Safety Program, as stated, appears to be compliance and, under certain conditions, a mine or part of a mine may be closed down for failure to comply. We find nothing in the Mine Safety Program which could be interpreted as grant-

*By amended complaint, the plaintiffs have also alleged violation by the defendants of the Civil Rights Act, 42 U.S.C. § 1983 and § 1985(3), but this theory has not been seriously argued.

ing to employees monetary or financial benefits not previously enjoyed.

Insofar as a maintainable action against Peabody is concerned, the record shows, as stated above, that all of plaintiffs' decedents were employees of Peabody, that Peabody and all of the deceased employees had elected to and were operating under the provisions of the Workmen's Compensation Act of Kentucky, and that the accident causing the death of plaintiffs' decedents arose out of and in the course of the employment. It further appears that the Workmen's Compensation Board of Kentucky took jurisdiction of the claims and that the plaintiffs sought and are in the process of obtaining all benefits provided by the Kentucky Act. KRS 342.015(1), which is a part of the Act, provides that the remedy set out therein is exclusive and that the employer shall be released from all other liability except in certain instances not involved here. *Greene* v. *Caldwell*, 170 Ky. 571, 186 S. W. 648 (1916); *Thomas* v. *Crummies Creek Coal Co.*, 297 Ky. 210, 179 S. W. 2d 882 (1944); *Davis* v. *Solomon*, Ky., 276 S. W. 2d 674 (1955); *Miller* v. *Scott*, Ky., 339 S. W. 2d 941 (1960).

The Court is of the opinion that the exclusive remedy provided in the Workmen's Compensation Act is dispositive of the claims against Peabody unless the liability of the Company has been enlarged under and by virtue of the terms of the applicable collective bargaining agreement between Peabody and the Union. Indeed, counsel for plaintiffs concedes there is no maintainable action against Peabody unless the genesis for such can be found in the collective bargaining agreement. It is the Court's feeling that the contract must be construed as a whole and that the intent of the signatory parties must be inquired into. *Upholsterers' International Union of North America, AFL-CIO* v. *American Pad & Textile Co.*, 372 F. 2d 427 (6th Cir. 1967); *Communication Workers of America, AFL-CIO* v.

General Telephone Company of Kentucky, 236 F. Supp. 588 (E.D. Ky. 1964).

With the above premises in mind, the Court has examined the entire contract and, as stated, finds nothing in it which would enlarge the monetary liability of Peabody to employees injured or killed in the course of their employment. It is specifically set out in the agreement that Peabody ". . . will provide the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed." We are unable to read into the agreement an intent by the parties to create a liability above and beyond the remedy provided by the compensation statute. We are fortified in this opinion by the fact that the Federal Coal Mine Safety Act, under which the Federal Mine Safety Code was promulgated, expressly provides that such Act and Code shall not supersede or affect the workmen's compensation law of any state. 30 U.S.C. § 481(c).* Accordingly, the Court is forced to the conclusion, and so finds, that the collective bargaining agreement does not evidence an intent of the signatory parties to enlarge the employer's monetary liability for injury to or death to an employee beyond that provided by the workmen's compensation law.

The Court is aware of the fact that collective bargaining agreements may, and frequently do, contain provisions for the imposition of liability upon an employer for financial benefits to employees in addition to those provided by state compensation statutes. Where this occurs, however, the specific benefits are set out and definite limitations are established. See *Nelson* v. *Victory Electric Works, Inc.*, 227 F. Supp. 404 (D.C. Md. 1964), aff'd. 338 F. 2d 944

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*As stated, the Federal Mine Safety Code for Bituminous Coal and Lignite Mines is incorporated into the collective bargaining agreement herein as the basis of the Mine Safety Program.

(4th Cir. 1964). The Union's Welfare and Retirement Fund provides a well known example of this in the coal industry.

It is axiomatic in the law that for every liability there must be a correlative or reciprocal duty. As indicated above, the Court is unable to find a duty owed by either Peabody or the Union to the plaintiffs in excess of the remedy provided by the workmen's compensation law. The Court is unable to find that the parties to the collective bargaining agreement intended or expressed a contractual duty in this respect.

The Court concludes that whatever caused and brought about the tragic accident on which these claims are based occurred in the course and scope of the employment of plaintiffs' decedents by Peabody, that said accident arose out of the employment, that the Workmen's Compensation Act of Kentucky is applicable, and that the remedy provided therein is exclusive.

Nor does the Court find any maintainable cause of action under the Civil Rights Act, 42 U.S.C. § 1983 and § 1985(3). There is no allegation or indication in the record of discrimination against a class or group of persons, and, of equal importance, there is no allegation or indication of state or governmental action. We are unable to find that either the Union or Peabody was motivated by any animus against any group or class.

Accordingly, it is hereby ordered that the motion of defendants, International Union, United Mine Workers of America, and District 23, United Mine Workers of America, and the motion of the defendant, Peabody Coal Company, Inc., for summary judgment be and the same are hereby sustained and it is, accordingly, now ORDERED AND ADJUDGED that the claims asserted by the plaintiffs in these actions be and the same are hereby dismissed with prejudice.

This 7th day of January, 1972.

(s) JAMES F. GORDON
United States District Judge

APPENDIX "B"

Nos. 72-1075 & 72-1153

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

72-1075

ANNA MAE BRYANT, ETC., ET AL., *Appellants,*

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL., - - *Appellees.*

72-1153

DELLA SUE RICE, ETC., *Appellant,*

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL., - - *Appellees.*

APPEALS from the United States District Court for the Western District of Kentucky.

OPINION—Decided and Filed September 26, 1972.

Before: PHILLIPS, Chief Judge, CELEBREZZE and KENT, Circuit Judges.

CELEBREZZE, Circuit Judge. On August 8, 1968 an explosion rocked the Peabody Coal Company's River Queen

Mine #1 in Muhlenberg County, Kentucky, killing nine miners. The explosion which took the lives of those men also precipitated a number of lawsuits; these appeals grow out of two of these suits.

After initiating procedures for such recovery as is permitted under Kentucky's Workmen's Compensation law, the representatives of the estates of eight of the dead miners brought actions in the United States District Court against both the Peabody Coal Company and the International Union, United Mine Workers of America. Plaintiffs' complaints pointed out that the Coal Company and the Union had signed a collective bargaining agreement in which they incorporated a document known as the Federal Mine Safety Code. That Code set down minimum health and safety standards for mines and was designed for the use of federal inspectors during their observations of coal mines. Plaintiffs' complaints contended that the Company obligated itself to conform to the Code's standards and that the Union undertook a duty to enfore such compliance. It was further asserted that both the Company and the Union failed to perform their respective duties, leading to the foreseeable result that plaintiffs' decedents, beneficiaries of the contract, were killed as a consequence of practices which were in violation of the Code.

The District Court rejected plaintiffs' claims and granted summary judgment in favor of both the Coal Company and the Union. Plaintiffs have accepted the District Court's decision with respect to the Coal Company and on appeal contest only that part of the District Court's judgment as denied them relief against the Union.

Appellants assert that theirs is an action grounded in § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, that is an action designed to remedy a breach of a collective bargaining agreement. Language in their complaint suggests, however, that this may also be viewed as a suit seeking recompense for the Union's breach of its duty

of fair representation. *See* Goldberg, J. concurring in *Humphrey* v. *Moore*, 375 U. S. 335, 351 (1964). We do not believe that either of these claims can withstand close scrutiny.[1]

When examined with care it is clear that neither the collective bargaining agreement in general[2] nor the "Safety Program" section specifically relied upon by appellants created any duties, breach of which could give rise to liability of the sort appellants seek to fasten upon the Union. The text of the safety program section is set out in full in the margin.[3] We need comment on only two aspects of that pro-

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[1]It is somewhat problematic whether appellants have the standing to bring this suit. While the Supreme Court has clearly established the right of individual employees to sue to enforce certain particularized rights granted them under collective bargaining agreements, it has indicated that not all rights created or duties assumed under a collective bargaining agreement may be subject to enforcement through a suit by an individual under § 301. See *Smith* v. *Evening News*, 371 U. S. 195, 200-201; cf. *Brown* v. *Sterling Aluminum Products Corporation*, 365 F. 2d 651, 657 (8th Cir. 1966) *cert. den.* 386 U. S. 957, *reh. den.* 386 U. S. 1027. Whether standing exists in a particular case turns upon the nature of the right or duty which the individual seeks to enforce. See *Smith*, *supra* 371 U. S. at 201 n. 9; *Brown* v. *Sterling Aluminum Products Corp.*, *supra*. When, as here, the asserted right and/or duty is completely illusory, resolution of the standing problem is extremely difficult. Further this case comes to us in an unusual stance with only the Union surviving as defendant. In view of these circumstances, rather than add to the muddle which surrounds the standing question, see *Falsetti* v. *Local Union #2026, U.M.W.*, 335 F. 2d 658, 660-661 (3d Cir. 1966) we have refrained from passing on this issue which was not raised by the parties. We assume without deciding that, for the purposes of this decision only, the requisite standing can be said to exist.

[2]The Agreement is formally known as the "National Bituminous Coal Wage Agreement of 1950 as Amended Effective April 1, 1966."

[3]"National Bituminous Coal Wage Agreement of 1950 as amended September 29, 1952," the "National Bituminous Coal Wage Agreement of 1950," and all previous Agreements, as therein provided, such amendments, modifications and supplements being as follows, to wit:

(Footnote continued on following page)

MINE SAFETY PROGRAM

Amend the "MINE SAFETY PROGRAM" section of the Agreement by striking out all of the language and inserting in lieu thereof the following:

"(a) **Mine Safety Code**

"The Federal Mine Safety Codes for Bituminous Coal and Lignite Mines of the United States, Part I—underground mines and Part II—strip mines, promulgated and approved October 8, 1953, by the Secretary of the Interior are hereby adopted and incorporated by reference in this contract as a code for health and safety in bituminous and lignite mines of the parties of the first part.

"(b) **Enforcement**

"(1) Reports of the federal coal mine inspectors: Whenever inspectors of the United States Bureau of Mines, in making their inspections in accordance with authority as provided in Public Law 49 and Public Law 552 find there are violations of the Federal Mine Safety Code and make recommendations for the elimination of such noncompliance, the operators shall promptly comply with such recommendations, except as modified in paragraph two of this subsection.

"(2) Whenever either party to the contract feel that compliance with recommendations of the federal mine inspectors as provided above would cause irreparable damage or great injustice, they may appeal such recommendation to the Joint Industry Safety Committee as hereinafter provided.

"(c) **Review and Revision**

"In order to carry out the intent and purposes of the agreement affecting the Federal Mine Safety Code it is agreed that representatives of the United Mine Workers of America and the coal operators signatory hereto shall hold joint consultations with the United States Bureau of Mines looking toward review and appropriate revision of the Federal Mine Safety Code. Any revised code that is agreed upon between the aforementioned parties, when adopted by the parties, shall be adopted and incorporated by reference into this Agreement in place of the code adopted and incorporated in the National Bituminous Coal Wage Agreement of 1950 and continued under this agreement.

"(d) **Joint Industry Safety Committee**

"There is hereby established under this agreement a Joint Industry Safety Committee composed of four members, two of whom will be appointed by the Mine Workers and two of whom will be appointed by the operators, whose duty it shall be to (1) arbitrate any appeal which is filed with it by any operator or any mine worker

(Footnote continued on following page)

gram: The general provisions relating to code compliance [sub-sections (a) and (b)] and the authorization for mine inspections contained in sub-section (e). In examining these sections it must be remembered that the substantive law to be applied is federal in nature, derived from the

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who feels that any reported violations of the code and recommendation of compliance by a federal coal mine inspector has not been justly reported or that the action required of him to correct the violation would subject him to irreparable damage or great injustice; and (2) to consult with the United States Bureau of Mines in accordance with the provisions of Section (e) above.

"(e) **Mine Safety Committee**

"At each mine there shall be a mine safety committee selected by the local union. The committee members while engaged in the performance of their duties, with the following exception, shall be paid by the local union. When the mine safety committee is making an investigation of an explosion and/or a disaster, they shall be paid by the company at their regular rate of pay for the hours spent making such investigation, provided there is not more favorable local agreement or practice already in effect. The committee at all times shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation law of the state where such duties are performed.

"The mine safety committee may inspect any mine development or equipment used in producing coal. If the committee believes conditions found endanger the life and bodies of the mine workers, it shall report its finding and recommendations to the management. In those special instances where the committee believes an immediate danger exists and the committee recommends that the management remove all mine workers from the unsafe area, the operator is required to follow the recommendation of the committee.

"If the safety committee in closing down an unsafe area acts arbitrarily and capriciously, members of such committee may be removed from the committee. Grievances that may arise as a result of a request for removal of a member of the safety committee under this section shall be handled in accordance with the provisions providing for settlement of disputes.

"The safety committee and operators shall maintain such records concerning inspections, findings, recommendations, and actions relating to this provision of the agreement as may be required, and copies of all reports made by the safety committee shall be filed with the operators.

"(f) The International Union, United Mine Workers of America, may designate memorial periods not exceeding a total of ten (10) days during the term of this agreement, provided it shall give proper notice to each district."

policy of the national labor laws. *See Textile Workers Union of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448 (1957). So far as possible the courts must seek to advance, not retard those national labor policies in construing the collective bargaining agreements which come before them.

Sub-section (a) of the Safety Program adopts by reference the Federal Mine Safety Code as part of the collective bargaining Agreement. The Code, promulgated by the Secretary of the Interior in 1953, provides minimal safety standards for the guidance of federal mine inspectors. Subsection (b) is labeled "Enforcement" and sets forth the manner in which the Code may be enforced under the Agreement. It limits such enforcement to situations where a violation of the Code has been found by a federal mine inspector and the inspector has issued recommendations for curing the violations. In such cases the mine operator is bound to comply with the recommendations promptly. Presumably in the event of non-compliance the Union could process the matter through normal gievance procedures. No federal inspector's report of violations or recommendations was offered into evidence below nor is there any suggestion that such report existed. Thus the prerequisite to the assumption of any possible enforcement obligation under the contract was lacking in this case.

Further, we are far from convinced that the contract necessarily makes the Union financially responsible for a failure to compel correction of Code violations even in situations where such violations *have been reported* by federal mine inspectors. Sub-sections (a) and (b) read together give the Union the power to compel compliance; nothing in the language of those sub-sections seems to require the Union to exercise such power. Collective bargaining agreements are literally agreements between unions and employers; the Union negotiators are intent on gaining the maximum power possible from management negotiators.

Whether or not they choose to exercise all the power gained depends on a variety of situations relating to the overall employment situation in the industry. It would be a mistake of vast proportion to read every power granted the union by management as creating a corollary contract right in the employee as against the union. Such interpretation of collective bargaining agreements would simply deter unions from engaging in the unfettered give and take negotiation which lies at the heart of the collective bargaining agreement.

Of course, the Union is not without responsibility toward its members with regard to the safety program. Quite apart from obligations created directly by the collective bargaining agreement itself any exclusive bargaining representative has a duty to fairly represent the members of its bargaining unit. This duty includes the obligation to enforce fairly the provisions of any collective bargaining agreement. *See Humphrey* v. *Moore*, 375 U. S. 335 (1964); *Vaca* v. *Sipes*, 386 U. S. 171 (1967). Such duty is breached when the Union in bad faith acts or fails to act for reasons which are arbitrary or discriminatory. *See Humphrey* v. *Moore*, *Vaca* v. *Sipes*, *supra*. While it was alleged that the United Mine Workers failed to enforce compliance with safety rules because of a conspiracy with the River Queen's operator the evidence introduced below showed no sign whatever of such conspiracy and failed even to show that Union officials had any knowledge of any Code violation at all. Under such circumstance there can be no basis for a finding that the Union breached its duty of fair representation.

In addition to their main argument directed toward the nonenforcement of the Safety Code itself appellants also assert that the Union breached its obligations under the collective bargaining agreement by failing to make periodic inspections of the mine. It is asserted that such inspection

obligation was created by the terms of sub-section (e) of the Safety Program section.

There can be no doubt that sub-section (e) does provide for a union role in dealing with safety at the mine. It indicates that a mine safety committee shall be established at each mine with members selected from among the ranks of the union local representing a particular facility.[4] Such committee was established and functioning at the River Queen Mine. The sub-section also provides that among other powers the committee "may inspect any mine development or equipment. . . ." It is apparently contended that this language places a duty to inspect upon the local and International Unions. We do not accept this contention. The use of the permissive "may" rather than obligatory language in the clause clearly negatives the possibility that any duty was to be created. No liability can be predicated upon the language of sub-section (e).

This Court is not unfamiliar with the difficult and long-standing problem of ensuring safety in the coal mines of this country. We recognize the harsh plight of those who have lost the family bread-winner through the all too frequent intervention of mining disaster. The answer to their problem is not to pervert the collective bargaining process by reading into its instruments a liability which was never contemplated and duties which were never assumed in fact or in theory. To saddle labor unions with liability for the mine operators' failure to comply with standards introduced into the contract at the union's bidding would simply be to discourage the inclusion of similar or more effective standards in later contracts. Such result would not serve the

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[4]The International Union suggests that sub-section (e) is completely irrevelant to it because the sub-section involves the *local union* only. It asserts that such local was a completely separate entity and the actions and duties of such local could not be imputed to the International. In view of the reading given sub-section (e) in the text we need not reach this contenion.

interest of miners and would retard rather than advance the goals of the National Labor policy.[5]

Since we do not find the Union to have breached any duty created by the collective bargaining agreement or by the obligation of fair representation we must conclude that it is without liability to appellants.

Accordingly, the judgment below is affirmed.

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[5]We do not consider the effect of a resolution adopted by the Union which provides as follows:

> Each district representative shall know the Federal Mine Safety Code and be made fully responsible for compliance with its various provisions by the various miners within his assigned jurisdiction.

The text of such resolution, while appearing in an interrogatory was never brought to the attention of the District Court in the complaints, the memoranda or the oral arguments which were presented to that Court. Further, appellants have consistently urged in this Court and below that theirs is an action based on the collective bargaining agreement. Obviously the resolution is not part of such agreement.